

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARGIE MICHAEL,

Plaintiff,

-against-

CAROLYN W. COLVIN, Acting Commissioner,
Social Security Administration,

Defendant.

VALERIE CAPRONI, United States District Judge:

USDC SDNY
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DATE FILED: 11/15/2018

15-CV-1099 (VEC)(SDA)

ORDER

Plaintiff Margie Michael brought this action appealing the denial of her applications for Social Security Disability (“SSD”) benefits, pursuant to 42 U.S.C. §§ 401–434, and Supplemental Security Income (“SSI”), pursuant to 42 U.S.C. §§ 1381–1385, by the United States Social Security Administration (“SSA”). Following a favorable decision after this case was remanded to the Commissioner of the SSA, Plaintiff’s counsel is now seeking attorneys’ fees, pursuant to 42 U.S.C. § 406(b)(1). On July 26, 2018, Magistrate Judge Aaron issued a Report and Recommendation (“Report”) recommending that the motion be granted and that Plaintiff’s counsel, The Law Offices of Charles E. Binder and Harry J. Binder, LLP, be awarded \$8,282.00 in attorneys’ fees. Report at 7 (Dkt. 34). The Report notified the parties that, pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the deadline to file any objections to the Report was 14 days from service of the Report and Recommendation. *Id.* To date, no objections have been filed. On due consideration, after review of the Report, no party having objected, and no clear error appearing on the face of the record, the Report is ADOPTED.

DISCUSSION

A district court reviewing a magistrate judge's report and recommendation "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). The district court "may adopt those portions of the report to which no 'specific, written objection' is made, as long as the factual and legal bases supporting the findings and conclusions set forth in those sections are not clearly erroneous or contrary to law." *Adams v. New York State Dep't of Educ.*, 855 F. Supp. 2d 205, 206 (S.D.N.Y. 2012) (quoting Fed. R. Civ. P. 72(b)). Failure to file timely objections to the magistrate's report constitutes a waiver of those objections both within the district court and on appeal. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985); *Small v. Sec'y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam).

Magistrate Judge Aaron recommended that the motion for attorneys' fees be granted, in the amount of \$8,282.00, and that Plaintiff's attorneys be ordered to return to Plaintiff the Equal Access to Justice Act ("EAJA") fees previously paid, in the amount of \$5,400.00. The Court has reviewed the factual and legal bases supporting Magistrate Judge Aaron's findings and conclusions, as set forth in the Report, and they are neither clearly erroneous nor contrary to law. Therefore, the Report is adopted in full.


CONCLUSION

For all the foregoing reasons, Magistrate Judge Aaron's Report and Recommendation (Dkt. 34) is ADOPTED in full. Plaintiff's motion for attorneys' fees (Dkt. 29) is GRANTED.

The Clerk of the Court is respectfully directed to enter judgment in Plaintiff's favor, to terminate the open motions at Dkts. 28 and 29, and to close the case.

SO ORDERED.

Date: November 15, 2018
New York, New York



VALERIE CAPRONI
United States District Judge